IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3188 OF 1998

Shri Ibrahim Yusufkhan Inamdar,
42-A, Mangalwar Peth,
Junnar, Distt. Pune. ... Petitioner.

-VERSUS-

1. The Divisional Controller,
M. S. R. T.C., Pune Division,
Pune.

2. The Labour Court, Pune
at Pune.

3. The Industrial Court, Pune
at Pune. ... Respondents.

R.V.Govilkar for the petitioner.

G.S.Hegde for respondent No.1.

CORAM : V.C. DAGA, J.

RESERVED ON : 19th December 2005.

PRONOUNCED ON : 25th January 2006.

ORAL JUDGMENT :

This petition is directed against the Judgment and order dated 12/8/1997 passed by the Learned Member, Industrial Court, Pune in Revision Application (ULP) No.105 of 1997, who was pleased to allow the revision application and set aside the Judgment and order dated 28/11/1996 passed by the 1st Labour Court, Pune in Complaint (ULP) No.105 of 1994 with the result, Original complaint filed by the petitioner came to be dismissed.

Factual Matrix :

2. The factual matrix reveals that the petitioner was working as driver in the establishment of respondent No.1since 1979. He was served with the chargesheet alleging that he had committed misconduct enumerated under clause 10, 11, 22 and 39-A of the Discipline and Appeal Procedure Rules framed by the Maharashtra State Road Transport Corporation (MSRTC).

3. In the chargesheet, it was also alleged that the accident, which took place on 27/5/93, was the outcome of rash and negligent driving of the petitioner which has caused death of one lady worker working on the road. The petitioner denied the charges leveled against him. Consequently, domestic enquiry was initiated against him. As a result of the domestic enquiry, the petitioner came to be dismissed from service.

4. Being aggrieved by the order of dismissal, the petitioner filed complaint under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“MRTU & PULP Act” for short). The Labour Court was pleased to allow the complaint directing reinstatement of the petitioner in his original post with continuity of service, but without back wages.

5. Being aggrieved by the above order of the Labour Court, the respondent No.1 preferred

revision application to challenge the said order before the Industrial Court, who, by the impugned order, was pleased to allow the revision application. In the result, complaint of the petitioner came to be dismissed.

6. The aforesaid judgment and the order of the Industrial Court is a subject matter of challenge in this petition filed under writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

Submissions :

7. Mr.Govilkar, learned Counsel for the petitioner contends that the Industrial Court has exceeded its jurisdiction vested in it under section 44 of the Act. He further submits that the Industrial Court could not have reappreciated the evidence and reversed findings of fact which were neither perverse nor against the established principles of law.

8. Mr.Govilkar strongly objected to the observations and findings of the Courts below recorded in para-20 of the impugned order that the complainant has been terminated from the service for some other misconduct as such the relief of reinstatement granted by the Labour Court was liable to be set aside.

9. Mr. Govilkar submitted that the statement made before the Industrial Court by respondent No.1 that the services of the petitioner were terminated for some other misconduct is absolutely incorrect. There was no other misconduct alleged against the petitioner other than the misconduct investigated in the departmental enquiry; which was the subject matter of the complaint before the Labour Court.

10. On being asked, the learned Counsel appearing for the respondent No.1- Corporation confirmed and submitted that no action against the petitioner for any other misconduct other than the misconduct involved in the present litigation was initiated and, therefore, the observations made by

the Industrial Court in para-20 of the impugned order are unsustainable. However, he tried to contend that bereft of the observations in para-20 of the impugned order, the action of respondent No.1 deserves to be sustained.

11. Mr.Govilkar, while reacting to the above submission, submits that one does not know; in absence of this statement what would have been the resultant decision of the Industrial Court. He, therefore, submits that the impugned order is liable to be set aside and the petition deserves to be allowed restoring the order passed by the First Labour Court dated 28th November, 1996 directing reinstatement of the petitioner.

Consideration :

12. Having heard the rival parties, it is not in dispute that the observations made by the Industrial Court in para-20 of the impugned order are un-sustainable. Both the parties agreed that there was no misconduct other than the misconduct

alleged against the petitioner, which is the subject matter of the present petition, as such question of termination of services of the petitioner for any other misconduct never arose. In this backdrop, it is difficult to predict what would have been the ultimate result, had there been no such statement made before the Industrial Court.

13. It will not be out of place to mention that if series of misconducts committed by the delinquent culminating in the punishment is brought to the notice of the Court, then such material tend to influence the mind of the Court. In these circumstances, I am of the view that the impugned order is liable to be set aside and the matter is liable to be remanded to the Industrial Court for consideration afresh.

14. Apart from the above, from the record, it appears that at the time when the revision was argued before the Industrial Court, the complainant/petitioner had already reached the age of 52 years. The revision was decided in the month

of August, 1997. This petition was heard in the month of December, 2005 i.e. after 9 years. Obviously, now, the petitioner must have crossed the age of superannuation. Under these circumstances even if this petition is allowed, no reinstatement can be ordered. Consequently, it would be open for the Industrial Court to consider afresh the nature of punishment to be imposed in the facts and circumstances of the case. All rival contentions are kept open.

15. In the result, the impugned order is set aside. The proceedings are remitted back to the Industrial Court for consideration afresh in the light of the observations made herein above. The Industrial Court is expected to hear and dispose of the revision application as expeditiously as possible, at any rate, within three months from the date of receipt of writ of this order.

Rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)